

F. JAMES SENSENBRENNER, JR., Wisconsin
CHAIRMAN

HENRY J. HYDE, Illinois
HOWARD COBLE, North Carolina
LAMAR S. SMITH, Texas
ELTON GALLEGLY, California
BOB GOODLATTE, Virginia
STEVE CHABOT, Ohio
DANIEL E. LUNGREN, California
WILLIAM L. JENKINS, Tennessee
CHRIS CANNON, Utah
SPENCER BACHUS, Alabama
BOB INGLIS, South Carolina
JOHN N. HOSTETTLER, Indiana
MARK GREEN, Wisconsin
RIC KELLER, Florida
DARRELL ISSA, California
JEFF FLAKE, Arizona
MIKE PENCE, Indiana
J. RANDY FORBES, Virginia
STEVE KING, Iowa
TOM FEENEY, Florida
TRENT FRANKS, Arizona
LOUIE GOHMERT, Texas

ONE HUNDRED NINTH CONGRESS

Congress of the United States

House of Representatives

COMMITTEE ON THE JUDICIARY

2138 RAYBURN HOUSE OFFICE BUILDING

WASHINGTON, DC 20515-6216

(202) 225-3951

<http://www.house.gov/judiciary>

JOHN CONYERS, JR., Michigan
RANKING MINORITY MEMBER

HOWARD L. BERMAN, California
RICK BOUCHER, Virginia
JERROLD NADLER, New York
ROBERT C. SCOTT, Virginia
MELVIN L. WATT, North Carolina
ZOE LOFGREN, California
SHEILA JACKSON LEE, Texas
MAXINE WATERS, California
MARTIN T. MEEHAN, Massachusetts
WILLIAM D. DELAHUNT, Massachusetts
ROBERT WEXLER, Florida
ANTHONY D. WEINER, New York
ADAM B. SCHIFF, California
LINDA T. SANCHEZ, California
ADAM SMITH, Washington
CHRIS VAN HOLLEN, Maryland

April 6, 2005

The Honorable Glenn Fine
Inspector General
U.S. Department of Justice
950 Pennsylvania Avenue, NW, Suite 4322
Washington, DC 20530-0001

Dear Mr. Inspector General:

We want to bring to your attention disturbing information that we received yesterday regarding the Department of Justice's investigation of Mr. Brandon Mayfield in association with the terrorist bombing in Madrid, Spain in March 2004. On March 24, 2005, the Civil Division of the Department of Justice sent a letter to Mr. Mayfield's attorney, Elden Rosenthal, informing him that Mr. Mayfield was the target of physical searches of his residence under the authority of the Foreign Intelligence Surveillance Act of 1978 (FISA).

In our view, it is a frightening prospect that an innocent person can have his home secretly searched, his DNA secretly taken and stored, and his computer files raided by the federal government. Now, the Bush Administration apparently believes that Mr. Mayfield is not even entitled to know the extent to which his privacy has been invaded.

The letter, which we have enclosed, says "Mr. Mayfield is hereby notified that the following property was seized, altered or reproduced during FISA searches of his residence: three hard drives of three desk top computers and one loose hard drive were copied; several documents in the residence were digitally photographed; ten DNA samples were taken and preserved on cotton swabs and six cigarette butts were seized for DNA analysis; and approximately 335 digital photographs were taken of the residence and the property therein."

In addition, the letter says "Mr. Mayfield is also hereby notified that he was the target of electronic surveillance and other physical searches authorized pursuant to FISA." It is impossible to discern what this means, what kind of searches and surveillance were conducted, or where and when they were conducted.

We are deeply troubled that federal law enforcement officials engaged in such a gross violation of the privacy and civil liberties of Mr. Mayfield, his family, and maybe even his private legal clients. Mr. Mayfield was exonerated of all suspicions and was found to have absolutely no connection whatsoever to the Madrid bombing or any other terrorist activity. This information points to a troubling use and abuse of law enforcement investigative powers granted by Congress under FISA and the Patriot Act.

On June 16, 2004, we sent you a letter asking you to initiate an investigation of the errors that led to the arrest and detention of Brandon Mayfield in association with the terrorist bombing in Madrid. You responded that your office would indeed open an investigation to examine the erroneous identification of Mr. Mayfield through faulty FBI fingerprint analysis and the decision to pursue him as a material witness to that crime. In light of this additional new information, we are requesting that you expand your initial investigation of the Mayfield case to include an examination of whether the civil liberties of Mr. Mayfield or his family were violated by these searches, whether the searches were lawfully conducted under FISA and how the information gathered has been used by the FBI and the Department of Justice.

This matter is highly time sensitive. We need to receive your report as soon as possible, certainly by June, so that the ramifications of this case on our oversight duties and upcoming legislation can be fully considered. Both the House and Senate have already begun the process of re-examining the Patriot Act, which amends FISA, for the purpose of reauthorizing portions of that Act that expire this year. Mr. Mayfield's case is an important example of the Department of Justice's use of the Patriot Act, and the facts must come to light.

Among other things, we hope that you will address the following questions:

1. When were the FISA searches authorized?
2. Where any searches conducted of Mr. Mayfield, his home, his family or his office under the authority of any other federal statute and if so, which ones?
3. Was the Patriot Act used or relied upon for the investigation, arrest, detention or planned indictment of Mr. Mayfield? If so, which sections were used and for what purpose?
4. When were the physical searches of Mr. Mayfield's residence conducted, how many agents participated in the search of his home and how long did each search last?
5. Under what provisions of FISA were the other physical searches and electronic surveillances of Mr. Mayfield conducted?


The Honorable Glenn Fine
Page Three
April 6, 2005

6. What forms of searches or means of electronic surveillance and recording were used to investigate Mr. Mayfield?
7. When and where were other searches and surveillance conducted? What evidence was obtained as a result of those searches and surveillance?
8. Was Mr. Mayfield's office searched?
9. Were the legal files of Mr. Mayfield's private clients searched in his home or office in any manner?
10. How long did any other physical searches take and how many agents were involved in those searches?
11. Did any searches or surveillance take place after the U.S. Attorney exonerated Mr. Mayfield and terminated the investigation of his connection to the Madrid bombing?
12. Did any searches or surveillance take place before Mr. Mayfield became a suspect in connection with the Madrid bombing?
13. Where is the evidence that was gathered in these searches? How is it secured and who has access to it?
14. Has this evidence been shared with any foreign governments, federal agencies or officials or law enforcement entities? If so, what was shared, with whom and when?
15. Has any of the evidence been returned to Mr. Mayfield or his attorney?
16. How long will the evidence from these searches be kept? Where and under what forms of security?

If you have any questions about this request, please contact Perry Apelbaum or Ted Kalo of the Judiciary Committee staff by telephone (202-225-6504) or fax (202-225-4423). You may provide your final report by mail to us at 2142 Rayburn House Office Building, Washington, DC 20515 and to 506 Hart Senate Office Building, Washington, DC 20510.


John Conyers, Jr.
Ranking Member
Judiciary Committee

Sincerely,


Robert C. Scott
Ranking Member
Crime Subcommittee



U.S. Department of Justice

Civil Division, *Federal Programs Branch*

Via U.S. Mail:

P.O. Box 883, Rm. 6132
Washington D.C. 20044

Via Special Delivery:

20 Massachusetts Ave, NW
Rm. 6132

Washington D.C. 20001

Sara W. Clash-Drexler
Trial Attorney

Tel: (202) 514-3481
Fax: (202) 616-8460

March 24, 2005

BY FACSIMILE AND U.S. MAIL

Elden Rosenthal
Rosenthal & Greene
1001 Southwest Fifth Avenue
Suite 1907
Portland, OR 97204

Dear Elden:

As our forthcoming response to plaintiffs' motion to compel will make clear, the government believes that the Court may not compel the Attorney General to make a disclosure under Title 50 of the United States Code Section 1825(b). Nevertheless, the government has decided voluntarily to provide the following notice to Mr. Brandon Mayfield. Please advise Mr. Mayfield of the following, which I have been authorized to provide on behalf of the Acting Attorney General of the United States.

As authorized by the Foreign Intelligence Surveillance Act of 1978 (FISA), as amended, 50 U.S.C. §§ 1801 *et seq.* Brandon Mayfield was the target of physical searches of his residence, and pursuant to 50 U.S.C. § 1825(b), Mr. Mayfield is hereby notified that the following property was seized, altered or reproduced during FISA searches of his residence: three hard drives of three desktop computers and one loose hard drive were copied; several documents in the residence were digitally photographed; ten DNA samples were taken and preserved on cotton swabs and six cigarette butts were seized for DNA analysis; and approximately 335 digital photographs were taken of the residence and property therein.

In addition, although 50 U.S.C. § 1825 (b) is limited by its terms to circumstances involving search of a residence of a U.S. person, Mr. Mayfield is also hereby notified that he was the target of electronic surveillance and other physical searches authorized pursuant to FISA.

Sincerely,

A handwritten signature in cursive script, appearing to read "Sara W. Clash-Drexler". The signature is written in dark ink and is positioned above the printed name.

Sara W. Clash-Drexler